

United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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B. S. NUNN,

Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

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Transcript of Record.

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Upon Writ of Error to the United States District Court  
of the District of Arizona.

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FILED

DEC 24 1924

F. O. MONCKTON,  
CLERK.



United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS  
OF RECORD.

ZIMMERMAN & MULHERN, Phoenix, Ariz.,  
Attorneys for Plaintiff in Error.

GEORGE T. WILSON, Assistant U. S. Attorney,  
Phoenix, Ariz.,  
Attorney for Defendant in Error.

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In the District Court of the United States for the  
District of Arizona.

C-2161—PX.

THE UNITED STATES

vs.

B. S. NUNN.

INFORMATION.

Violating Section 3, Title 2, Act Oct. 28, 1919, Pos-  
sessing Intoxicating Liquor.

United States of America,  
District of Arizona,—ss.

BE IT REMEMBERED, That Geo. T. Wilson,  
Assistant Attorney of the United States for the  
District of Arizona, who prosecutes in behalf and  
with the authority of the United States, comes here  
in person into court at this October, 1924, Term  
thereof, and for the United States gives the Court  
to understand and be informed that one B. S. Nunn,  
on or about the 30th day of August, A. D. 1924, and

within the said District of Arizona, did wilfully and unlawfully have in his possession certain intoxicating liquor, to wit: approximately seventy-five gallons of whiskey, which said intoxicating liquor was then and there fit for use for beverage purposes, he, the said B. S. Nunn, then and there having no lawful permit to possess the said intoxicating liquor; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

That the said defendant has heretofore been convicted upon the charge of transporting intoxicating liquor in violation of the Act of Oct. 28, 1919, upon his plea of guilty on April 17, 1923, the files and records of which said conviction is on file in the Clerk's Office of this Court under case numbered Phoenix 1729-Criminal.

That the said defendant has heretofore been bound over by a United States Commissioner for the District of Arizona to await the further action of this Court [1\*]

Whereupon, the said United States Attorney for the District aforesaid prays the consideration of this Court here in the premises, and that due process of law may be awarded against the said B. S. Nunn, defendant, in this behalf to make him answer to the United States touching and concerning the premises.

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\*Page-number appearing at foot of page of original certified Transcript of Record.



Dated at Phoenix, Arizona, 20th day of October,  
A. D. 1924.

GEO. T. WILSON,  
Asst. United States Attorney for the District of  
Arizona.

United States of America,  
District of Arizona,—ss.

I, Geo. T. Wilson, Assistant United States At-  
torney for the District of Arizona, being sworn,  
do say that the foregoing information is true as I  
verily believe.

GEO. T. WILSON.

Subscribed and sworn to before me this 20th  
day of October, A. D. 1924.

[Seal] CHAS. H. ADAMS,  
Deputy Clerk United States Dist. Court for the  
District of Arizona.

[Endorsed]: Filed Oct. 20th, 1924. C. R. Mc-  
Fall, Clerk. By Chas. H. Adams, Deputy.

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In the District Court of the United States for the  
District of Arizona.

(No. C-2161—PHOENIX.)

THE UNITED STATES

vs.

B. S. NUNN.

## DEMURRER TO INFORMATION.

Now comes B. S. Nunn, by his attorneys, Zimmerman & Mulhern, and demurs to the information filed in the above-entitled court and cause for the reason that said information and the charges and facts herein set forth do not constitute a violation of law or a public offense, in this, to wit:

That said information does not state that the possession alleged was at a time and place where possession was unlawful or illegal and that said information does not state that said intoxicating liquor was possessed in any particular place and that said information does not state that said intoxicating liquor was possessed at a particular place other than a place where such possession is lawful.

WHEREFORE, the defendant requests that said information be dismissed and held for naught and that he be exonerated therefrom.

October 22, 1924.

ZIMMERMAN & MULHERN,  
Defendant's Attorneys.

[Endorsed]: Filed Oct. 22, 1924. C. R. McFall,  
Clerk. By Chas. H. Adams, Deputy Clerk. [2]

In the District Court of the United States for the  
District of Arizona.

(No. C-2162—PHOENIX.)

THE UNITED STATES

vs.

B. S. NUNN.

MOTION TO QUASH AND SET ASIDE IN-  
FORMATION.

Now comes B. S. Nunn, by his attorneys, Zimmerman & Mulhern, and moves this Court for its order quashing and setting aside the information filed in the above-entitled court and cause for the reasons, to wit:

That the charges and facts set forth in said information do not constitute a violation of law or a public offense in that said information does not state that said intoxicating liquor was possessed at a particular place other than at a place where such possession is lawful, or in any manner contrary to law.

That said intoxicating liquor alleged in said information to have been possessed, on or about the 30th day of August, A. D. 1924, by the defendant, B. S. Nunn, was, if possessed, at No. 1102 South Central Avenue, city of Phoenix, Maricopa County, Arizona, in said Federal District, said 1102 South Central Avenue being, then and there, the private dwelling of said B. S. Nunn, and being, then and

there, occupied and used by him as his dwelling only.

That the official record and testimony had and produced at the preliminary hearing before R. A. Kirk, Commissioner in said Federal District, on the 16th of September, 1924, at Phoenix, in said district, is hereto attached and filed herewith as a part of this motion.

October 22, 1924.

ZIMMERMAN & MULHERN,

Defendant's Attorneys.

[Endorsed]: Filed Oct. 22, 1924. C. R. McFall, Clerk. By Chas. H. Adams, Deputy Clerk.  
[3]

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Regular October, 1924, Term, at Phoenix.

In the United States District Court in and for the  
District of Arizona.

Honorable F. C. JACOBS, United States District  
Judge, Presiding.

(Minute Entry of Saturday, October 25, 1924.)

No. C-2161 (PHOENIX).

UNITED STATES OF AMERICA,

Plaintiff,

vs.

B. S. NUNN,

Defendant.

MINUTES OF COURT—OCTOBER 25, 1924—  
ORDER OVERRULING DEMURRER, etc.

Messrs. L. F. Zimmerman and D. V. Mulhern are present for the defendant.

Arguments are now heard on the defendant's demurrer, whereupon said demurrer is ordered overruled. The defendant excepts to the ruling, and the exception is ordered allowed.

Arguments are heard on defendant's motion to quash and set aside the information herein, and said motion is ordered denied. An exception is ordered allowed the defendant. [4]

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Regular October, 1924, Term, at Phoenix.

In the United States District Court in and for the  
District of Arizona.

Honorable F. C. JACOBS, United States District  
Judge, Presiding.

(Minute Entry of Wednesday, November 5, 1924.)

No. C-2161 (PHOENIX).

UNITED STATES OF AMERICA,

Plaintiff,

vs.

B. S. NUNN,

Defendant.

MINUTES OF COURT—NOVEMBER 5, 1924—  
PLEA.

The defendant, B. S. Nunn, is present in person with his counsel, L. F. Zimmerman, Esq., and having heretofore been duly arraigned, said defendant now pleads Not Guilty, which plea is duly entered. [5]

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C-2161 (PHOENIX).

UNITED STATES OF AMERICA,  
Plaintiff,  
Against  
B. S. NUNN,  
Defendant.

VERDICT.

We, the jury, duly empaneled and sworn in the above-entitled action, upon our oaths, do find the defendant Guilty in manner and form as charged in the information.

BYRON CARR,  
Foreman.

[Endorsed]: Filed Nov. 6, 1924. C. R. McFall, Clerk. By Paul Dickason, Chief Deputy Clerk. [6]

In the District Court of the United States for the  
District of Arizona.

No. C-2161—PHOENIX.

THE UNITED STATES

vs.

B. S. NUNN.

MOTION IN ARREST OF JUDGMENT.

And now after verdict against the defendant, B. S. Nunn, and before sentence, comes the said defendant in his own proper person, and by F. L. Zimmerman, his attorney, and moves the Court here to arrest judgment herein and not pronounce the same, for the following reasons, to wit, that the information filed in this cause does not charge any public offense or any violation of law, in that it does not state that the possession of intoxicating liquor alleged was such possession as is prohibited by the National Prohibition Act and does not state the place of such alleged possession; because of which said errors in the record herein no lawful judgment can be rendered by the Court upon the record in this cause.

November 6, 1924.

B. S. NUNN,  
Defendant.

By F. L. ZIMMERMAN,  
Attorney for Defendant.

[Endorsed]: Filed Nov. 6, 1924. C. R. McFall, Clerk. By Paul Dickason, Chief Deputy Clerk. [7]

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Regular October, 1924, Term, at Phoenix.

In the United States District Court in and for the  
District of Arizona.

Honorable F. C. JACOBS, United States District  
Judge, Presiding.

(Minute Entry of Saturday, November 8th, 1924.)

No. C-2161 (PHOENIX).

UNITED STATES OF AMERICA,

Plaintiff,

vs.

B. S. NUNN,

Defendant.

MINUTES OF COURT—NOVEMBER 8, 1924—  
JUDGMENT.

The defendant, B. S. Nunn, is present in person and with counsel, L. F. Zimmerman and D. V. Mulhern, Esquires, and is now duly informed by the Court of the nature of the crime charged in the information herein, to wit, unlawful possession of intoxicating liquor, in violation of Section 3, Title 2, Act of October 28, 1919; of his trial and conviction thereof by jury. And no legal cause appearing why judgment should not be imposed, the Court renders judgment as follows:



That the said defendant having been duly convicted of said crime, the Court now finds him guilty thereof, and does ORDER, ADJUDGE AND DECREE that as a punishment therefor he shall pay a fine of Five Hundred Dollars (\$500.00); and that he shall stand committed to the county jail of Maricopa County, Arizona, until said fine is paid or he is otherwise discharged by due course of law.

The defendant excepts to the verdict and judgment rendered.

Supersedeas bond on appeal is ordered fixed at \$750.00.

IT IS FURTHER ORDERED that the defendant is allowed twenty (20) days in addition to time provided by law within which to prepare, serve, file and settle his bill of exceptions herein. [8]

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In the District Court of the United States for the  
District of Arizona.

No. C-2161—PHOENIX.

THE UNITED STATES

vs.

B. S. NUNN.

PETITION FOR WRIT OF ERROR.

To the Honorable F. C. JACOBS, Judge of the  
District Court of the United States, for the  
District of Arizona:

And now comes B. S. Nunn, the defendant in the  
above-entitled cause, and feeling himself aggrieved

by the verdict of the jury and the judgment of the District Court of the United States, for the District of Arizona, entered on the 8th day of November, 1924, hereby petitions for an order allowing him, said defendant, to prosecute a writ of error from the United States Circuit Court of Appeals of the Ninth Circuit to the District Court of the United States, for the District of Arizona; that said writ of error may be made a supersedeas, and that your petitioner be released on bail in an amount to be fixed by the Judge thereof, pending the final disposition of said writ of error. Assignment of errors is filed with this petition.

Nov. 8, 1924.

B. S. NUNN.

By F. L. ZIMMERMAN,

By D. V. MULHERN,

His Attorneys.

Service of copy hereof hereby acknowledged  
11/8/1924.

GEO. T. WILSON,

Asst. U. S. Atty.

[Endorsed]: Filed Nov. 8, 1924. C. R. McFall,  
Clerk. By Chas. H. Adams, Deputy Clerk. [9]

In the District Court of the United States for the  
District of Arizona.

No. C-2161—PHOENIX.

THE UNITED STATES

vs.

B. S. NUNN.

ASSIGNMENT OF ERRORS.

And now comes B. S. Nunn, the plaintiff in error, and in connection with his petition for a writ of error says that in the record, proceedings, and judgment aforesaid, error has intervened to his prejudice, to wit:

(1) The Court erred in overruling the demurrer of defendant to the information filed against him in this cause;

(2) The Court erred in denying and overruling the motion of defendant to quash the information filed against him, because the alleged possession of liquor was at a place where such possession was not prohibited or unlawful, to wit, defendant's private dwelling;

(3) The Court erred over the objection and exception of the defendant in admitting any evidence whatsoever in support of the information because said information does not sufficiently charge the defendant with any public offense or violation of the National Prohibition Act;

(4) The Court erred in denying and overruling the defendant's motion made at the close of all

the evidence to direct the jury to find the defendant not guilty because the evidence conclusively shows that the liquor was possessed in defendant's private dwelling while used and occupied by him for that purpose only and because the information fails to charge and the evidence fails to show that the liquor so possessed by the defendant in his private dwelling was possessed for an unlawful purpose and in an unlawful manner. [10]

(5) The Court erred in overruling and denying the motion of the defendant in arrest of judgment because the information fails to charge any public offense or any violation of the National Prohibition Act.

WHEREFORE, said plaintiff in error prays that the judgment of the District Court of the United States may be reversed and held for naught, et cetera.

Nov. 8, 1924.

B. S. NUNN.

By F. L. ZIMMERMAN,

D. V. MULHERN,

Attorneys for Plaintiff in Error.

Service of copy acknowledged this 8th of November, 1924.

GEO. T. WILSON,

Asst. U. S. Attorney.

[Endorsed]: Filed Nov. 8, 1924. C. R. McFall, Clerk. By Chas. H. Adams, Deputy Clerk.  
[11]

In the District Court of the United States for the  
District of Arizona.

No. C-2161—PHOENIX.

THE UNITED STATES

vs.

B. S. NUNN.

ORDER ALLOWING WRIT OF ERROR AND  
ADMITTING DEFENDANT TO BAIL.

Let a writ of error issue from the United States Circuit Court of Appeals for the Ninth Circuit to the United States District Court for the District of Arizona, as prayed for in the petition of the said B. S. Nunn; and let a citation be issued to the defendant in error.

IT IS ORDERED that the writ of error, allowed as above stated, operate as a supersedeas, and the defendant be admitted to bail, upon furnishing a bond in the penal sum of Seven Hundred Fifty no/100 Dollars (\$750.00), conditioned according to law to be approved by me.

Nov. 8, 1924.

F. C. JACOBS,  
Judge.

Service of copy hereof acknowledged this 8th of  
November, 1924.

GEO. T. WILSON,  
Asst. U. S. Atty.

[Endorsed]: Filed Nov. 8, 1924. C. R. Mc-Fall, Clerk. By Chas. H. Adams, Deputy Clerk.  
[12]

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In the District Court of the United States for the  
District of Arizona.

No. C-2161—PHOENIX.

THE UNITED STATES

vs.

B. S. NUNN.

CITATION ON WRIT OF ERROR.

The United States of America,—ss.

The President of the United States to the United  
States of America, GREETING:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, at the city of San Francisco, California, within thirty days from the date of this writ, pursuant to a writ of error duly allowed by the District Court of the United States in and for the District of Arizona, and filed in the clerk's office of said court on the 8th day of November, 1924, in a cause wherein B. S. Nunn is plaintiff in error and you are defendant in error, to show cause, if any, why the judgment rendered against said plaintiff in error as in said writ of error mentioned should not be reversed and corrected, and why speedy justice should not be done to the party in that behalf.

WITNESS the Honorable F. C. JACOBS, Judge of the District Court of the United States in and for the District of Arizona, this eighth day of November, A. D. 1924, and of the Independence of the United States the one hundred and forty-ninth.

F. C. JACOBS,  
District Judge.

[Seal]

Attest: C. R. McFALL,  
Clerk.

By Chas. H. Adams,  
Deputy Clerk. [13]

Service of the within citation and receipt of a copy is hereby admitted this 8th day of November, 1924.

GEO. T. WILSON,  
U. S. Attorney,  
Attorney for Defendant in Error.

[Endorsed]: Filed Nov. 8, 1924. C. R. McFall, Clerk. By Chas. H. Adams, Deputy Clerk. [14]

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C.-2161—(PHOENIX).

WRIT OF ERROR.

United States of America,—ss.

The President of the United States, to the Honorable The Judges of the United States for the District of Arizona, GREETING:

Because in the record and proceedings, as also in the rendition of the judgment, of a cause which is in

the said District Court before you, or some of you, between the United States, plaintiff, and B. S. Nunn, defendant, manifest error has happened, to the great damage of the said B. S. Nunn, defendant, as by his complaint appears, we, being willing that error, if any, should be duly corrected, and full, speedy justice done to the parties aforesaid in this behalf, do command, if judgment be given therein, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with the things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at San Francisco, in said circuit on the 6th day of December, 1924, in the said Circuit Court of Appeals, to be then and there held, that the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct the errors, what of right, and according to the laws and customs of the United States, should be done.

WITNESS the Honorable WILLIAM HOWARD TAFT, Chief Justice of the United States, the eighth day of November, in the year of our Lord one thousand nine hundred and twenty-four.

[Seal]

CHAS. H. ADAMS,  
Deputy Clerk of the United States District Court  
for the District of Arizona.

Allowed by

F. C. JACOBS,  
Judge.



Service of copy of this hereby acknowledged this 8th of Nov., 1924.

GEO. T. WILSON,  
Asst. U. S. Atty.

[Endorsed]: Filed Nov. 8, 1924. C. R. McFall,  
Clerk. By Chas. H. Adams, Deputy Clerk.

RETURN ON WRIT OF ERROR.

The Answer of the Judge of the District Court of the United States for the District of Arizona, to the within writ of error:

As within commanded, I certify under the seal of my said District Court, in a certain schedule to this writ annexed, the record and all proceedings of the plaint whereof mention is within made, with all things touching the same, to the United States Circuit Court of Appeals, for the Ninth Circuit, within mentioned, at the day and place within contained.

By the Court:

[Seal] C. R. McFALL,  
Clerk U. S. District Court for the District of Arizona.

By M. R. Malcolm,  
Deputy Clerk. [15]

In the District Court of the United States for the  
District of Arizona.

No. C-2161—PHOENIX.

Information for Violating Section 3, Title 2, Act of  
October 28, 1919, Possessing Intoxicating  
Liquor.

THE UNITED STATES

vs.

B. S. NUNN.

BILL OF EXCEPTIONS.

BE IT REMEMBERED, That upon the arraignment of the defendant in said cause at the October Term of said court, on October 22, A. D. 1924, he, by his counsel, demurred to said information, said demurrer being as follows, to wit:

“That said information does not state that the possession alleged was at a time and place where possession was unlawful or illegal and that said information does not state that said intoxicating liquor was possessed in any particular place and that said information does not state that said intoxicating liquor was possessed at a particular place other than a place where such possession is lawful,”

which said demurrer was overruled by the Court, to which ruling of the Court the defendant then and there duly excepted.

That defendant, at the same time and place, by his counsel, moved the Court for its order quashing and setting aside said information, said motion to quash and set aside information being as follows, to wit:

“That the charges and facts set forth in said information do not constitute a violation of law or a public offense in that said information does not state that said intoxicating liquor was possessed at a particular place other than at a place where such possession is lawful, or in any manner contrary to law. That said intoxicating liquor alleged in said information to have been possessed, on or about the 30th day of August, A. D. 1924, by defendant, B. S. Nunn, was, if possessed, at Number 1102 South Central Avenue, City of Phoenix, Maricopa County, Arizona, in said Federal District, said 1102 South Central Avenue, being then and there the private dwelling of said B. S. Nunn, and being then and there, occupied and used by him as his dwelling only. That the official record and testimony made and produced at the preliminary hearing before R. A. Kirk, U. S. Commissioner in said Federal District, on the 16th day of September, 1924, at Phoenix, in said District, is hereto attached and filed herewith as a part of this motion.” [16]

That said official record and testimony showed conclusively that at the time and place alleged in said information said 1102 South Central Avenue, Phoenix, Arizona, was the private dwelling of the defendant used and occupied by him as his dwelling

only; which said motion to quash and set aside information was, by the Court, denied, to which ruling of the Court defendant, then and there, duly excepted; and that said defendant, being on the 5th day of November, A. D. 1924, arraigned in person, appeared and pleaded not guilty to said information.

BE IT FURTHER REMEMBERED, that on the 5th day of November, A. D. 1924, being one of the days of the October term of said court, this cause came on to be heard before the Honorable F. C. Jacobs, one of the Judges of said court and a jury duly impaneled. George T. Wilson, Assistant United States District Attorney, appeared as counsel for the Government and F. L. Zimmerman and D. V. Mulhern, appeared as counsel for the defendant. The United States to maintain the issues on its part called as a witness one N. W. Matlock, who, after having been duly sworn, was asked his name and occupation whereupon defendant, by his counsel, then and there, objected to every and all evidence offered on behalf of the prosecution *or* the Government in support of the allegations contained in the information, on the ground and for the reason that the charges made therein do not state a public offense, nor a violation of law against the United States, but the objection was overruled by the Court, to which ruling of the Court the defendant, by his counsel, then and there, duly excepted. Whereupon the witness testified as follows: That on August 30, 1924, he, a captain of the police of the City of Phoenix, with four other police officers, went to the home

of defendant at No. 1102 South Central Avenue, in said city, in said Federal District, at a little after 2 o'clock in the afternoon, to search for intoxicating liquor under a search-warrant issued by the Acting City Magistrate of said city of Phoenix. That the officers entered the house and [17] found defendant and defendant's wife there, but no one else. After reading the search-warrant to defendant the officers searched the dwelling and found, in a little cellar under the bathroom, two barrels and three one-gallon glass containers of liquor, one barrel being full, the other part full, of whiskey. That they seized and removed the barrels and containers and took them to the Police Station, at said city of Phoenix, and with contents undisturbed turned them over to the Chief of Police, said city. The witness examined three glass containers and two barrels in the courtroom and identified them as being the same as seized from the dwelling of the defendant. Whereupon the glass containers were marked Government's Exhibits for Identification Numbers One, Two, and Three, and the barrels Numbers Four and Five. That he judged the capacity of the barrels to be about fifty gallons each, one being full, the other about half full. That at the time of the seizure witness, being in charge of the expedition, had no conversation with defendant relative the barrels, containers, or liquor, but did discuss the search-warrant with him. On cross-examination this witness testified as follows: That the liquor was found at defendant's residence and home, Number 1102 South Central Avenue, Phoenix, Arizona; that Number

1102 South Central Avenue is not a business place but is a private dwelling-house, consisting of about two bedrooms, a sleeping-porch, living-room, kitchen and bathroom; and that, of the witness' own knowledge, it is used by defendant and defendant's wife as their private dwelling. That he had no warrant for defendant's arrest, but took him in custody, and turned him over to the Chief of Police, said City of Phoenix. Police Officer Paul Ernest Sauer, after being first duly sworn, testified for the Government as follows: That he was present when defendant's residence at 1102 South Central Avenue, Phoenix, Arizona, said Federal District, was raided, and that Police Officers Matlock, O'Hagan and Vess were the others making the raid. [18] That the search of defendant's residence and the seizure therefrom of Government's Exhibits for Identification Numbers One, Two, Three, Four, and Five, were made as testified by witness Matlock; and witness testified no further. Police Officer Fred Vess, after being first duly sworn, testified for the Government as follows: That he was present during the search of defendant's residence on August 30, 1924, with Police Officers Matlock, Sauer and O'Hagan, and that the Government's Exhibits Numbers One, Two, Three, Four and Five, for Identification, and seized therefrom at that time. That Number 1102 South Central Avenue aforesaid is not a business place, but is a private dwelling and that, of his own knowledge, it was used by defendant and defendant's wife as their private dwelling; witness testified no further. Police Officer Ed O'Hagan, after being

first duly sworn, testified as follows: That he was present on August 30, 1924, with the other three police officers, when the premises occupied by the defendant were searched and that Government's Exhibits for Identification Numbers One, Two, Three, Four and Five, were seized from said premises. That he has had considerable experience in tasting intoxicating liquor and therefrom is able to state whether liquor is intoxicating, contains one-half of one per cent of alcohol by volume, what kind of liquor it is, and whether or not it is fit for use for beverage purposes. That immediately after the raid he tasted the contents of Exhibits for Identification Numbers One, Two, Three and Four, and that to his taste, it was very good whiskey, containing more than one-half of one per cent of alcohol by volume; that it was intoxicating liquor fit for use for beverage purposes; this was, substantially, all his testimony. Chief of Police George O. Brisbois, of Phoenix, Arizona, after being first duly sworn, testified for the Government as follows: That, on the 30th day of August, 1924, Police Officers Matlock and the other officers delivered to him, at his office, Government's Exhibits for Identification Numbers One, Two, Three, Four and Five; that he possessed the [19] said exhibits for quite a while but later delivered them to Prohibition Officer Kent; during his possession he did not disturb the contents other than to make a test out of some of them; which was all his testimony. Federal Prohibition Agent S. E. Kent, after being first duly sworn, testified for the Government as follows: That he saw the five Gov-

ernment's Exhibits for Identification in the custody of Chief of Police Brisbois; that they were later transferred to witness' office, to Government's storage, where they remained since; that seals were placed upon the exhibits in his presence; that said seals have not been tampered with or broken since; that the contents were in no way disturbed after received from the Chief of Police; that has had experience in the testing, tasting and drinking of intoxicating liquors and is able to take a drink of liquor and say what kind it is and whether or not it contains more than one-half of one per cent of alcohol by volume and whether or not it is intoxicating and fit for use for beverage purposes. Whereupon he sampled the contents from Exhibit Number Four for Identification and said it is whiskey containing more than one-half of one per cent of alcohol by volume, is intoxicating and fit for use for beverage purposes. That it is pretty good whiskey. Government's Exhibits for Identification Numbers One, Two, Three, Four and Five is all the liquor received, turned over to us, and said exhibits were then offered and received in evidence. No further testimony by the witness. Paul Dickason, after being first duly sworn, for the Government, took the stand and attempt was made to elicit testimony from him which was not received by the Court.

Here the Government rested its case.

Whereupon defendant, by his counsel, moved the Court to instruct the jury to return a verdict of



“Not guilty” on the ground that the Government’s proof is insufficient to establish the commission of any public offense or establish the violation of any law against the United States and that the evidence is insufficient to sustain [20] the allegations of the information and further that the evidence departs from the allegations in the information and that said information does not state a public offense or any violation of the laws of the United States; the evidence conclusively shows that the liquor was possessed in defendant’s private dwelling-house while same was used and occupied by him as his private dwelling only, it is not lawful under the National Prohibition Act for a person to have liquor in his possession in his private dwelling and in that case only. The evidence does not show and the information does not allege that the liquor was possessed at any place, or in any manner, other than at a lawful place and in a lawful manner. Said motion was overruled by the Court, to which ruling of the Court defendant, then and there, duly excepted.

The defendant offered no evidence, but rested.

The Government waived the opening argument; the defendant waived argument. Whereupon the Court instructed the jury. The jury, at the hour of 10:30 o’clock A. M. on the 6th day of November, 1924, to which date the court recessed, retired and brought in a verdict finding the defendant guilty as charged in the information.

The defendant, by his counsel, thereupon moved

the Court to arrest the judgment for the following reasons, to wit:

“That the information filed in this cause does not charge any public offense or any violation of law, in that it does not state that the possession of intoxicating liquors alleged was such possession as is prohibited by the National Prohibition Act and does not state the place of such alleged possession; because of which said errors in the record herein no lawful judgment can be rendered by the Court upon the record in this cause.”

Which said motion was denied by the Court, to which ruling of the Court the defendant, then and there, duly excepted.

Whereupon the Court continued the time for judgment and fixed same at 10 o'clock A. M., November 8, 1924.

BE IT FURTHER REMEMBERED, that on November 8, 1924, the Court entered judgment upon the verdict and sentenced the defendant to pay a fine of Five Hundred Dollars and in default of the payment of [21] the fine that he be imprisoned in the county jail of Maricopa County until the same is paid; to which verdict, ruling and judgment, the defendant, by his counsel, then and there, duly excepted on the ground that the evidence and the facts in this case do not support such verdict or judgment and that the information in the cause filed does not charge therein a public offense or a violation of the National Prohibition Laws of the United States,

and that the evidence is insufficient to warrant the verdict of the jury or the judgment of this Court.

And this was all the evidence taken and proceedings had on the above dates in the trial of the above-entitled cause.

This is to certify that the foregoing bill of exceptions tendered by the defendant is correct in every particular and is hereby settled and allowed and made a part of the record in this cause.

Done in open court this 25th day of November, A. D. 1924.

[Seal]

F. C. JACOBS,  
United States District Judge.

Rec'd copy of within this 19th day of November, 1924.

GEO. T. WILSON,  
Asst. U. S. Attorney for Defendant in Error.

[Endorsed]: Filed Nov. 19, 1924. C. R. McFall,  
Clerk. By Chas. H. Adams, Deputy Clerk. [22]

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In the District Court of the United States for the  
District of Arizona.

C.-No. 2161—PHOENIX.

THE UNITED STATES

vs.

B. S. NUNN.

## PRAECIPE FOR TRANSCRIPT OF RECORD.

The Clerk of this court is hereby directed to prepare and certify a transcript of the record in the above-entitled case for the use of the Circuit Court of Appeals of the United States for the Ninth Circuit, by including therein the following:

Information.

Demurrer to information.

Motion to quash and set aside information.

Defendant's plea of "not guilty."

Verdict.

Defendant's motion in arrest of judgment.

Judgment and sentence.

Petition for writ of error.

Assignment of errors.

Order allowing writ of error.

Citation on writ of error.

Writ of error.

Reporter's transcript of evidence.

Bill of exceptions.

Praecipe for record.

Notice of filing praecipe.

Bail bond on writ of error.

Certificate of the Clerk to the correctness of the record, as per praecipe.

Order overruling demurrer of defendant to information and allowance of exception; and,

Order denying defendant's motion to quash and set aside the information and allowance of exception.

November 19, 1924.

F. L. ZIMMERMAN,  
D. V. MULHERN,  
Attorneys for Plaintiff in Error.

[Endorsed]: Filed Nov. 19, 1924. C. R. McFall,  
Clerk. By Chas. H. Adams, Deputy Clerk. [23]

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In the District Court of the United States for the  
District of Arizona.

C-2161—PHOENIX.

THE UNITED STATES

vs.

B. S. NUNN.

NOTICE OF FILING PRAECIPE.

To Mr. George T. Wilson, Assistant United States  
Attorney, for the Defendant in Error:

Please take notice that on the 19th day of November, 1924, the undersigned filed with the Clerk of this Court a praecipe for the record to be transmitted to the United States Circuit Court of Appeals for the Ninth Circuit, on writ of error sued out in the above cause, a copy of which praecipe is herewith served on you.

Dated this 19th day of November, 1924.

F. L. ZIMMERMAN,  
D. V. MULHERN,  
Attorneys for Plaintiff in Error.

Service of the within notice and copy of praecipe is hereby accepted this 19th day of November, 1924.

GEO. T. WILSON,

Asst. U. S. District Attorney for Defendant in Error.

[Endorsed]: Filed Nov. 19, 1924. C. R. McFall, Clerk. By Chas. H. Adams, Deputy Clerk. [24]

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United States of America,  
District of Arizona,—ss.

Ben Pasqualetti and Hugh R. Daggs, whose names are subscribed as sureties to the within bond, being severally duly sworn, each for himself, deposes and says: That he is a resident and householder within the District of Arizona; that he is worth the amount for which he becomes surety on said bond, over and above all debts and liabilities in unencumbered property situated within this District, exclusive of property exempt from execution and forced sale.

B. PASQUALETTI.

HUGH R. DAGGS.

Subscribed and sworn to before me this eighth day of November, 1924.

[Seal]

CHAS. H. ADAMS,

Deputy Clerk United States District Court for the District of Arizona.

[Endorsed]: Filed Nov. 8, 1924. C. R. McFall, Clerk. By Chas. H. Adams, Deputy Clerk. [25]

In the District Court of the United States for the  
District of Arizona.

No. C-2161—PHOENIX.

THE UNITED STATES

vs.

B. S. NUNN.

BAIL BOND ON WRIT OF ERROR.

KNOW ALL MEN BY THESE PRESENTS:

That we, B. S. Nunn, as principal, and Ben Pasqualetti, and Hugh R. Daggs, as sureties, are held and firmly bound unto the United States of America in the full and just sum of Seven Hundred Fifty & no/100 Dollars (\$750.00) to be paid to the United States of America, to which payment well and truly made we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents.

Sealed with our seals and dated this 8th of November, A. D. 1924.

WHEREAS, lately at the October term, A. D. 1924, of the District Court of the United States for the District of Arizona, in a writ depending in said court, between the United States of America, plaintiff, and B. S. Nunn, defendant, a judgment and sentence was rendered against said B. S. Nunn and the said B. S. Nunn has obtained a writ of error from the United States Circuit Court of Appeals for the Ninth Circuit to reverse the judgment and

sentence in the aforesaid suit, and a citation directed to the said United States of America, citing and admonishing the United States of America to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit at the City of San Francisco, sixty days from and after the date of said citation, which citation has been fully served.

Now, the condition of said obligation is such, that if the said B. S. Nunn shall appear in person in the United States Circuit Court of Appeals for the Ninth Circuit on such day or days as may be appointed for the hearing of said cause in said court and prosecute his writ of error and shall abide by and obey all orders made by the United States Circuit Court of Appeals for the Ninth Circuit, in said cause, and shall pay any fine and costs imposed by the judgment of District Court against him, and shall surrender himself in execution of the judgment and sentence appealed from as said Court may direct, if the judgment and sentence against him shall be affirmed, or the writ of error or appeal is dismissed, and if he shall appear for trial in the District Court of the United States for the District of Arizona, Phoenix Division, on such day or days as may be appointed for a retrial by said District Court and abide by and obey all orders of said Court, provided the judgment and sentence against him shall be reversed by the United States Circuit Court of Appeals for the Ninth Circuit, then the above obli-



gation to be void; otherwise to remain in full force, virtue and effect.

B. S. NUNN.

B. PASQUALETTI.

HUGH R. DAGGS.

Approved by

F. C. JACOBS,

Judge.

November 8, 1924. [26]

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In the United States District Court in and for the  
District of Arizona.

No. C-2161—PHOENIX.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

B. S. NUNN,

Defendant.

CERTIFICATE OF CLERK U. S. DISTRICT  
COURT TO TRANSCRIPT OF RECORD.

United States of America,  
District of Arizona,—ss.

I, C. R. McFall, Clerk of the District Court of the United States, for the District of Arizona, do hereby certify that I am the custodian of the records, papers and files of the said United States District Court for the District of Arizona, including the records, papers and files in the case of United States of

America versus B. S. Nunn, said case being numbered Criminal 2161 on the docket of said court.

I further certify that the foregoing 26 pages, numbered from 1 to 26, inclusive, constitute a full, true and correct copy of the record, and of the assignment of errors and all proceedings in the above-entitled cause, as set forth in the praecipe filed in said cause and made a part of this transcript as the same appears from the originals of record and on file in my office as such clerk.

And I further certify that there is also annexed to said transcript the original writ of error, and the original citation on writ of error issued in said cause.

I further certify that the cost of preparing and certifying to said record, amounting to Twelve and 45/100 Dollars (\$12.45), has been paid to me by the above-named defendant (plaintiff in error).

WITNESS my hand and seal of said Court this 2d day of December, 1924.

[Seal] C. R. McFALL,  
Clerk of the District Court of the United States,  
for the District of Arizona.

By M. R. Malcolm,  
Deputy Clerk. [27]

[Endorsed]: No. 4419. United States Circuit Court of Appeals for the Ninth Circuit. B. S. Nunn, Plaintiff in Error, vs. United States of America, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the District of Arizona.

Received December 4, 1924.

F. D. MONCKTON,  
Clerk.

Filed December 5, 1924.

F. D. MONCKTON,  
Clerk of the United States Circuit Court of Ap-  
peals for the Ninth Circuit.

By Paul P. O'Brien,  
Deputy Clerk.

